

TENNESSEE REGULATORY AUTHORITY

Deborah Taylor Tate, Chairman
Pat Miller, Director
Sara Kyle, Director
Ron Jones, Director



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Nashville, Tennessee 37243-0505
T.R.A. DOCKET ROOM

MEMORANDUM

TO: Chairman Deborah Taylor Tate
Director Pat Miller
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services and External Affairs Division
Edwin Mimms, Manager, Do Not Fax Program
Kim Beals, Counsel

DATE: June 8, 2004

SUBJECT: Settlement with Southpoint Financial Services
(Docket No. 04-00151)

Attached is a Settlement Agreement between the Consumer Services and External Affairs Division ("Staff") and Southpoint Financial Services ("Southpoint") for violations of the Tennessee Do-Not-Fax statute, Tenn. Code Ann. § 65-4-501 *et seq.*

Three (3) complaints alleging three (3) separate violations of Tenn. Code Ann. § 65-4-501 *et seq.* were registered against Southpoint with the Authority on April 21, 2004, May 12, 2004, and May 13, 2004, respectively. Staff notified Southpoint in writing about each complaint. This settlement agreement in resolution of these complaints requires Southpoint to make a payment of \$4,000 to the Authority along with assurances of future compliance with applicable state law. The terms of this settlement require Southpoint to pay the first installment of \$2,000 to the Authority no later than thirty (30) days following the Authority's ratification of the Settlement Agreement with the remaining \$2,000 be paid in five (5) monthly installments of \$400. A representative for Southpoint will be available telephonically for the Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this settlement are fair and reasonable and should serve to prevent further unsolicited facsimile advertising complaints being filed against Southpoint. Staff submits the attached Settlement Agreement for your deliberation at the June 21, 2004 Authority Conference.

cc: Mr. John Perry, President, Southpoint Financial Services

NASHVILLE, TENNESSEE

Consumer Services Division
File No. F04-0450
F04-0473
F04-0288

On April 21, 2004, the CSD received a complaint alleging the receipt of an unsolicited facsimile advertisement from Southpoint on April 20, 2004. Immediately thereafter, the CSD began an investigation of Southpoint and provided the Company a notice of this complaint on April 22, 2004. On May 12, 2004, the CSD received a second complaint alleging receipt on that day of an unsolicited facsimile advertisement from Southpoint. The CSD immediately provided notice to the Company of this complaint. The CSD received a third complaint on May 13, 2004

alleging receipt of another unsolicited facsimile advertisement from Southpoint on May 11, 2004. The CSD provided notice to the Company of the third complaint on May 14, 2004.:

Tenn. Code Ann. § 65-4-502(a) prohibits persons from transmitting or causing another person to transmit an unsolicited facsimile advertisement. Tenn. Code Ann. § 65-4-504(a) authorizes the TRA to assess penalties for violations of Tennessee's Do-Not-Fax Law, including the issuance of a cease and desist order and/or the imposition of a civil penalty of up to a maximum of \$2,000 for each violation. Accordingly, the Company faces a maximum penalty in this proceeding of \$6,000 stemming from these three complaints.

In negotiating this Settlement Agreement, the CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Southpoint is located in Alpharetta, Georgia and employs approximately twenty persons. After receiving notice of the complaints, Southpoint contacted the CSD and expressed an interest in resolving these alleged violations, as well as any additional complaints whether presently known or unknown by the CSD. To this end, the CSD and Southpoint agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

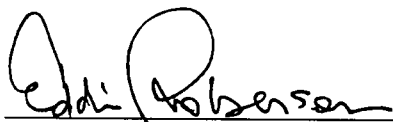
1. Southpoint admits that the three complaints against it are true and valid complaints.
2. After receiving notice of the complaints, the Southpoint contacted the CSD and expressed an interest in resolving this matter.
3. Southpoint agrees to pay \$4,000 in full settlement of these complaints, the first installment of \$2,000 to be remitted to the Office of the Chairman of the TRA no later than thirty days following approval of the Settlement Agreement by the TRA Directors. The remaining \$2,000 shall be paid in five installments of \$400 each and shall be

remitted to the TRA no later than the first business day of the following five consecutive months.¹

4. Upon completion of the terms and conditions of this Settlement Agreement, Southpoint is excused from further proceedings in this matter.
5. Southpoint agrees to cooperate fully with the CSD staff in its continuing investigation of Southpoint's broadcast fax vendors and to comply in the future with all provisions of Tennessee's Do-Not-Fax Law, Tenn. Code Ann. § 65-4-501 *et seq.*
6. A representative of Southpoint will participate telephonically in the Authority Conference during which the Directors will consider this Settlement Agreement.
7. In the event that Southpoint fails to comply with the terms and conditions of this Settlement Agreement, the TRA reserves the right to re-open this Docket. Southpoint shall pay any and all costs incurred in enforcing the Settlement Agreement.
8. Any violation of Tennessee's Do-Not-Fax Law by Southpoint after the date of this Settlement Agreement will be treated separately and will not be cause to re-open this Docket.
9. If any clause, provision or section of this Settlement Agreement is held to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

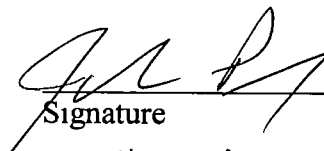
¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No 04-00151

10. This Settlement Agreement represents the entire agreement between the Parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

6-8-04
Date



Signature

John Perry
Print Name

President
Print Title

Southpoint Financial Services

6/4/04
Date